

THE CONSTITUTIONAL AMENDMENT.

M E S S A G E

OF

HIS EXCELLENCY, MARCUS L. WARD,

(GOVERNOR OF NEW JERSEY,)

VETOING SENATE JOINT RESOLUTION NO. 1.

STATE OF NEW JERSEY,
EXECUTIVE DEPARTMENT,
TRENTON, Feb. 25, 1868. }

To the Honorable the Senate of the State of New Jersey—

MR. PRESIDENT: I herewith beg leave respectfully to return, without my approval, Senate Joint Resolution number one, entitled a "Joint Resolution withdrawing the consent of this State to the proposed Amendment to the Constitution of the United States, entitled, 'Article Fourteen,' and rescinding the Joint Resolution approved September eleventh, Anno Domini eighteen hundred and sixty-six, whereby it was resolved that said proposed Amendment was ratified by the Legislature of this State."

The amendment in question, being article fourteenth among the amendments to the Constitution of the United States, was on the thirteenth day of June, eighteen hundred and sixty-six, by a vote of two-thirds of both Houses of Congress, duly proposed for adoption. On the sixteenth of June in the same year it was submitted by the Secretary of State of the United States to the action of the State of New Jersey, and on the eleventh of September, in the same year, was ratified by the Legislature of this State. Such ratification, authenticated in due form, was made known to the Government of the United States, and the evidence thereof filed in the office of the Secretary of State, in obedience to the law which requires the decision of the several Legislatures upon this subject to be communicated to the State Department of the United States, and in conformity with the express terms of the official communication of the Secretary of State of the United States, which accompanied it when sent to the Governor of New Jersey to be laid before the Legislature for its action. Of the official reception of this ratification, the authorities of the State of New Jersey were officially informed.

I cannot approve the Joint Resolution by which it is now attempted to withdraw or rescind the ratification so made, because—

1. I deem that such a resolution, if finally adopted, would be of no validity or effect. The only authority by virtue of which the Legislature can take legitimate action upon the subject of amendments to the Constitution of the United States is contained in the fifth article of that instrument. By that article, the State action is limited to the two cases therein specifically named. One is the application by the Legislature to Congress to call a convention for proposing amendments, and the other is when amendments are by Congress proposed to the Legislature. In the latter case, the action of the Legislature can be based only on the proposal then existing and pending before them. When such proposal is accepted and approved, the amendment ratified and returned to the General Government by which it was submitted, the transaction is completed, the decision of the State has been rendered, and the power of the Legislature over the subject is spent. No further action can be taken until the subject is again submitted by Congress, with whom the power to make such submission is exclusively lodged. An omission or failure to ratify by the Legislature of one year, or within any specified time, would not prevent such ratification at a subsequent time; all such legislative cognizance of the subject being dependent upon and continuing with the pendency of the proposal itself.

But with the acceptance of the proposal, and its official and formal return to the authorities, from whom alone it could come, that cognizance must of necessity end. Any other construction is believed to be without support from the Constitution itself, as well as opposed to the general analogies of law.

It must be remembered that while a State has the clear and undoubted right to repeal and rescind its own laws, subject to its contracts, yet that in all its relations to the General Government, its actions are conclusive and final. If a State part with a portion of its soil to the General Government, it cannot recover its title, even under the doctrine of eminent domain. If the Legislature appoint a Senator for the constitutional term, no matter how faithless he may be to the interests of the State, or how wantonly he may disregard the sentiments of her people, the Legislature cannot withdraw the appointment and trust.

An approval or ratification of an amendment to the national Constitution by the Legislature of a State cannot be regarded as experimental or conditional, unless declared to be such when made. When solemnly and unqualifiedly done, it is of the nature and effect of a contract, which cannot be rescinded or changed at the mere will of the State by which it was made.

The Legislature acted on the amendment, under the provisions of the Constitution of the United States; that Constitution fixes no limit of time during which the assent of the requisite number of Legislatures shall be given. By their ratification the Legislature of New Jersey agreed that the amendment should be a part of the Constitution of the United States, whenever the Legislatures of a sufficient number of States had added their assent to that of New Jersey, to make the whole number of assenting Legislatures equal to three-fourths of the States. The ratification of New Jersey, made under

the provisions of the Constitution, was without condition or limit of time within which the Legislatures of the other States, necessary to make the requisite number, should signify their assent. Her action so taken and published, enters into and becomes part of the causes and considerations by which the action of other States in the premises is influenced and determined, and she cannot, by subsequent action, fix any new limit or condition to the contract into which she has duly entered, nor withdraw her assent while the conditions upon which it was given remain unchanged and unbroken.

2. If any doubt can exist as to the power of the Legislature to withdraw its approval of such amendment *before* it has been ratified by the Legislatures of three-fourths of the States, it is nowhere supposed that such approval could be *afterwards* withdrawn. This ratification, by three-fourths of the States, must be deemed already to have been made, unless the Legislature shall assume to decide that when more than one-fourth of the States have, by rebellion and war, withdrawn from their duties and functions as States, and rendered constitutional amendments essential to the welfare of the nation, such States can by their action, prevent the adoption of those amendments, and thus occasion, indirectly and partially, the results which rebellion and war were waged more openly and thoroughly to produce. Of the States that have maintained their fidelity to the Union, and their constitutional relations to each other and the General Government, more than three-fourths have ratified the amendment, and I cannot deem it open to doubt that their action is sufficient and conclusive. If open to doubt it is not to be decided by the Legislatures of the States, and should not be assumed by this Legislature to be within its province to determine.

3. But aside from the absence of any proper, legal or constitutional power possessed by the Legislature, I am constrained to withhold my approval from this Joint Resolution, because, I deem it repugnant to the convictions of the majority of the people, and of the voters of the State. In the general election that followed the ratification of the Amendment in New Jersey, the fact that such ratification was approved by the voters of the State, was abundantly shown. Since then, it has not been considered or canvassed by the people, and no reference was had to it in the late election, at which the present Legislature was chosen.

4. Another, and the remaining reason for withholding my approval, is because I deem the Amendment a wise one, and in a high degree important to the welfare of the nation. Its provisions are eminently just, and fitted to promote the great objects which the Constitution was formed and intended to secure.

Its first section defines and settles the hitherto disputed question of citizenship, by declaring all persons born or naturalized in the United States, and subject to the jurisdiction thereof, to be citizens of the United States and of the State wherein they reside, and as such, entitled to the equal benefit of the laws. It provides that no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; and that no State shall deprive any person of life, liberty or property, without due process of law, or

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deny to any person within its jurisdiction, the equal protection of the laws.

The second section of the amendment fixes the basis of representation in Congress.

Without this section the political power and representation in Congress of the rebellious States would be largely increased as a consequence of the rebellion, while at the same time the population continued the same. The insurrectionary States would elect members of the House of Representatives upon the whole number instead of three-fifths of their colored population, and in this way possess advantages which they have not heretofore enjoyed. It is against the plainest dictates of wisdom and right to make such a discrimination against the people of the States who have been faithful to the Union, and in favor of those who have so lately waged war to destroy it. It cannot be supposed that the people of this State are in favor of such a distinction; rewarding treason by increasing the political power of those who have committed it; entrusting in an enlarged and unprecedented manner the great interests of the nation, its public credit and well-being, to the decision of representatives whose recent efforts and wishes have been directed to the ruin of both.

The third section of the amendment disqualifies from holding political office certain classes of persons who, having taken oaths to support the Constitution of the United States, shall have afterwards engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof, thus adding perjury to treason. It confers, however, upon Congress the power to remove such disability.

The fourth section provides against the possible validity or legality of debts, obligations or claims incurred in aid of the rebellion, and against the possible questioning of the validity of the public debt incurred in suppressing it.

These are the provisions of the amendment which it is now proposed, if possible, to annul. They need no argument to illustrate their wisdom and justice. The simple statement of them is irresistible by the patriotic judgment, and their ratification has received the approval of the people. The amendment was formally and solemnly ratified upon the part of the Legislature of this State, and thereby, to the extent of its power, made a part of the Constitution of the United States.

Presuming that the object of this Joint Resolution is therein expressed, and my objections being to that object, and to the claim of power to accomplish it, I do not think it necessary or proper to refer to the assumed reasons for the passage of the resolution which are alleged in the preamble which accompanies it.

Although always regretting to differ in opinion from the Legislature, yet, believing that the Joint Resolution now presented would, if approved, be inoperative and vain, in violation of the plighted faith of the State, injurious to the common good, and repugnant to the wishes of the people we represent, I am constrained to return the same to you with my objections as above.

Respectfully,

MARCUS L. WARD.